the Ninth Circuit will give any further consideration to the remedy issue in that case. It has already twice rejected the Board's position—in its opinion filed December 2, 1965, denying enforcement to the portion of the Board's order here relevant and in its order of January 7, 1966, denying a petition for rehearing which raised the same points with respect to the remedy as the Board here urges. The Board's motion for reconsideration addressed itself solely to the point that the action of this Court on January 17, 1966, in **Newspaper Drivers v. Detroit Newspaper Publishers**, No. 663, O. T. 1965, showed that the Ninth Circuit had erred in refusing to remand the **Golden State** case to the Board for reconsideration in the light of **American Ship Building v. NLRB**, 380 U. S. 300 (1965). It was this motion which the Ninth Circuit sustained on April 5, 1966, allowing the Board to brief this issue. The Board, however, on April 18, 1966, after the Petition for Certiorari was filed in this case, filed a brief in support of its petition for rehearing in **Golden State** in which it not only briefed the remand question but also attempted to resurrect the remedy issue which had been twice decided against it. There is thus no reason to believe that the Ninth Circuit either intended to, or will give further consideration to its remedy decision.

3. While government counsel now say the purpose of the proviso to paragraph 1 (b) was to make "plain" that the company was not free to alter unilaterally the terms and conditions of employment established under the contract invalidated by the Board (Br. 8), the Eighth Circuit clearly ordered enforcement on the theory that the proviso was intended to preclude any demand by the International for retroactivity (Opinion, Pet. 37). It is indeed ironic that the government here seeks to defend action by the Court below which enforced the Board's order by interpreting it in a manner which denies an important portion of the relief which the Board presumably intended to

award the charging party—the right to seek retroactive benefits.[4]

It is clear that the utter confusion surrounding the frequent and varying use of this remedy by the Board is worthy of this Court's attention . . . or a summary reversal based .on **Case.**

CONCLUSION.

For the foregoing reasons and the reasons stated in the petition itself, the petition for writ of certiorari should be granted.

Respectfully submitted,

SAM ELSON,

STEPHEN W. SKRAINKA,
7 North Seventh Street,
St. Louis, Missouri 63101,
Attorneys for Petitioner.

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[4] Nor is this issue academic. The International, on April 29, 1966, wrote the company that "In addition to the enclosed proposed Collective Bargaining Agreement, the Union also wishes to advise you that it intends to seek during negotiations retroactive wages and other benefits for the employees pursuant to the Order and Decision of the National Labor Relations Board in Case No. 17-CA-2278."